

## Decision of the French Energy Regulatory Commission dated 9 May 2012 on the conditions of connection and access to the public transmission grid of new interconnectors, mentioned in Article 17 of Regulation (EC) No 714/2009

The following were present at the deliberation: Philippe de LADOUCKETTE, President, Olivier CHALLAN BELVAL, Frédéric GONAND, Jean-Christophe LE DUIGOU and Michel THIOILLIÈRE, commissioners.

Considering Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity, particularly article 17,

Considering Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity,

Considering the Energy Law, particularly articles L. 134-1, L. 321-6, L. 342-1 and L. 342-5,

Considering decree n° 2003-588 of 27 June 2003 modified, concerning the general technical requirements regarding design and operation with which installations must comply in order to be connected to the public electricity transmission grid,

Considering decree n° 2007-1280 of 28 August 2007, concerning the consistency of the works of connections and extension of connections to public electricity grids;

Considering the decision of the French Energy Regulatory Commission (CRE) of 7<sup>th</sup> April 2004, concerning the setting up of technical frame of reference for public electricity system operators,

Considering CRE's deliberation of 26 July 2011, resulting in a decision about the rules for drawing up the procedure for processing requests for connecting new interconnectors to the public electricity transmission system,

Considering the recommendation of the Superior Council for Energy, dated 2 May 2012.

After having deliberated,

### **Explanatory statement**

Article 17 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity (hereinafter "*Regulation 714/2009*") sets the conditions under which a new interconnector may, on request, enjoy, for a limited time, an exemption from all or part of the rules relating to third party grid access, to the approval of tariffication methods, to the unbundling of transmission systems and transmission system operators and to the allocation of revenues generated by the allocation of the capacities of the line.

Pursuant to article 17 of regulation 714/2009 and in the absence of conflicting national provisions, the exemption decision is taken, on a case-by-case basis, by CRE.

An exemption decision is an individual decision creating rights, notified as such to the applicant and published on CRE's Internet site.

Such an exemption decision, which will have consequences in terms of connection and access to the grid, causes CRE to implement the provisions of Paragraph 8 of Article L. 134-1 of the Energy Law. Pursuant to this provision, CRE specifies the rules concerning the conditions of connection and access to the public transmission system of new interconnectors mentioned in Article 17 of Regulation 714/2009.

Pursuant to Article 2 of Regulation 714/2009, an interconnector is a "*transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States*". A new interconnector is defined as an interconnector not completed by 4 August 2003.

Article L. 321-6 of the Energy Law states that "*the public transmission system operator operates and maintains the public electricity transmission system. It is responsible for its development so that producers, consumers and the public distribution systems can be connected and to enable interconnection with the systems of other European countries*". Paragraph I of Article L. 121-4 of the Energy Law specifies that the mission of developing and operating the public electricity transmission system consists, in particular, of ensuring connection and access to that grid under non-discriminatory conditions.

To satisfy this requirement, all of the rules applied by the public transmission system operator must be made known to the players. This is a condition for them to be able to assert their rights when drawing up the agreements related to their connection and access to the systems or when interpreting them. In particular, these rules must provide for an objective handling of the connection requests that the requestors submit to the public transmission system operator.

The principles of objectivity and non-discrimination<sup>1</sup> must concern the connection all of the installations mentioned in article L. 342-5 of the Energy Law, in particular, the "*interconnection circuits*". New interconnectors, which technically are interconnection circuits, must comply with the provisions of Decree of 27 July 2003 issued pursuant to Article 14 of the law of 10 February 2000 (that became article L. 342-5 of the Energy Law).

After having publicly consulted the players in the electricity market, during the months of April 2009 and May 2010, about the application of Article 7 of Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions of access to the network for cross-border exchanges in electricity (that became Article 17 of Regulation 714/2009) and conditions for access to the public transmission system CRE published a first deliberation containing a statement on the subject on 30 September 2010.

After having publicly consulted the players in the electricity market during the months of August and September 2011 on the possibility allowing new electricity interconnectors to benefit from an exemption from Article 9 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, CRE published a second deliberation containing a statement on the application of Article 17 of Regulation (EC) no 714/2009 of 13<sup>th</sup> July 2009, on 29 March 2012.

CRE may, in the future, complete this deliberation with supplementary decisions concerning the conditions of connection and access to the public transmission system, in particular.

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<sup>1</sup> Article 5 of Directive 2009/72/EC states that "*technical rules establishing the minimum technical design and operational requirements for the connection to the system of [...] interconnector circuits [...] shall be objective and non-discriminatory*".

CRE has decided what follows:

## **1. On the conditions for connecting a new interconnector to the public electricity transmission system**

### **1.1. The technical requirements for connecting a new interconnector**

Article 14 of the French law dated 10 February 2000 (that became article L. 342-5 of the Energy Law) provides for a decree that sets the "*general technical requirements regarding design and operation for connection to the public transmission system which generator installations, directly connected consumer installations, public distribution systems, **interconnector circuits** and direct lines must fulfil*".

Pursuant to this provision, two decrees have been published. Decree n° 2003-588 of 27 June 2003 on the general technical design and operation specifications which the installations must fulfil for connection to the public electricity transmission system establishes the technical connection methods, to the exclusion of the production installations, which are dealt with in decree n° 2008-386 of 23 April 2008.

New interconnectors, which are technically interconnector circuits, must comply with the provisions of the abovementioned decree of 27 June 2003. To ensure this, a decree should state the technical requirements regarding design and operation, in the same way as for the consumer installations and public distribution systems, to ensure that new connectors satisfy the objectives set by this decree for their connection to the public transmission system. As the publication of this decree has not yet taken place, the transmission system operator is invited to produce transitory rules setting out the technical requirements for the connection of an interconnector circuit and to publish them in its technical documentation of reference.

Prior to publication, these transitory rules for the connection of an interconnector circuit should be the subject of a consultation with representatives for different categories of users of the public transmission system, and the public distribution system operators and potential investors in new interconnectors should be associated with this consultation.

Prior to publication, the public transmission system operator should notify CRE of the transitory on connection of an interconnector circuit along with the results of the consultation held with the different categories of users, the public electricity distribution system operators and potential investors in new interconnectors, clearly stating all of the opinions recorded, as stated in CRE's deliberation of 03 September 2010.

Any project for modifying the transitory rules on connection of an interconnector circuit should follow the same consultation and notification procedure prior to publication.

### **1.2. Processing a connection request for a new interconnector**

In its deliberation of 26 July 2011, CRE specified the conditions for processing requests for connection to the public electricity transmission system that apply to new interconnectors.

The procedure for handling connection requests could follow the example of that applied by the public transmission system operator to requests for the connection of a generation installation, especially in terms of the ranking criteria aimed at ensuring non-discriminatory processing of various connection requests. To this end, new interconnectors could be filed on the waiting list under conditions similar to those to which a generation installation is subject.

*In case of implementation of coordinated congestion management methods applicable to new interconnection (see article 2.3, below)*

The connection requests handling procedure could provide for specific arrangements if a coordinated congestion management method applicable to the new interconnection (see article 3.1 below) is implemented. Provisions concerning temporary limitations on injection and/or withdrawal as well as the established hierarchical ordered handling when the connection request is made could then be modified.

## **2. On conditions for access to the public transmission system for new interconnectors**

### **2.1. The tariff for use of the public electricity transmission grid does not apply to new interconnectors**

As CRE explained in its public consultation of 3 May 2010, then in its deliberation of 30 September 2010, the characteristics of new interconnectors justifies the tariff for use of the public electricity transmission grid (TURPE) not to be applied to them, in particular insofar as such an application may not favour market integration. Indeed, a consequence of the application of this tariff might be the setting up of a relatively high reserve price and thus form an economic barrier to maximisation of interconnection flows.

Nevertheless, in certain cases, it could be obliged to pay a part of its profits and/or its revenues to the community of users subject to tariff for use of the public electricity transmission grids, as provided for in CRE's communication of 29 March 2012 on the application of article 17 of Regulation 714/2009.

### **2.2. Connection costs for a new interconnector**

Connecting an installation to the public electricity system generates grid costs related to extension and reinforcement. In the case of a classic connection, the costs related to the extension are invoiced to the connection applicant, and those related to reinforcement are pooled by means of the TURPE.

Paragraph II of article 4 of the law of 10<sup>th</sup> February 2000 (that became article L. 341-2 of the French energy code) states that the tariffs for use of the transmission system cover, in particular, "*a part of the costs of connection to those systems*". Moreover, the "*part of the costs of connection and extension of those systems that are not covered by the tariffs for use of the public transmission systems are eligible for a contribution*".

Therefore, in the current state of the law, the contribution paid by a connection applicant can only, at most, cover the costs of connection and extension, which excludes reinforcement costs.

Therefore, this is the invoicing method that should be applied to a new interconnector.

Nevertheless, as pointed out in CRE's communication of 29 March 2012 on the application of article 17 of regulation 714/2009, CRE will pay particular attention to the reinforcement costs caused by the new interconnector and, pursuant to paragraph 1 of article 17 of Regulation 714/2009, may refuse an exemption if it considers the costs supported by the community of users subject to tariff for use of the public electricity transmission grids to be disproportionate in relation to the expected benefits.

### **2.3. Injection and withdrawal capacities offered to the operator of the new interconnector**

Pursuant to point 1.7 of the guidelines appended to Regulation 714/2009, the "*TSOs shall not limit interconnection capacity in order to solve congestion inside their own control area, save [...] for reasons of operational security [...]*".

If need be, for grid security, the public transmission system operator may reduce the capacity offered to the operator of a new interconnector beyond the framework specified in the technical and financial proposal. Indeed, pursuant to CRE's decision of 26 July 2011, temporary limitations to the power injected and/or withdrawn by the new interconnector may be specified in this document. The connection convention specifies the implementation of these reductions.

In this case, the operator of the new interconnector will be compensated according to one of the following two schemes:

- the cost of compensating the holders of capacity by the interconnector operator, which will depend on the compensation scheme applied by the investor,
- the compensation scheme applied to regulated interconnectors linking the same markets.

The choice of one or the other of the compensation schemes is left up to the public transmission system

operator and the operator of the new interconnector. However, the methods chosen must not make the public transmission system operator bear a greater risk than the one that it is ready to bear to ensure the level of firmness applied to regulated interconnectors linking the same markets, nor greater than the one that the operator of the new interconnector is ready to bear to ensure the level of firmness offered to the capacity holders, whatever the cause of the reductions.

Any capacity reduction, whether in the framework of the technical and financial proposal or for the safety of the public transmission system, must be notified to the operator of the new interconnector early enough for him to be able to propose to the users of the new interconnector the same firmness and compensation conditions as the French regulated interconnectors linking the same markets.

*In a case of implementation of coordinated congestion management methods applicable to the new interconnector*

Pursuant to point 3.1 of the guidelines appended to Regulation 714/2009, the operator of the new interconnector may have cause to coordinate with the operators of transmission systems that influence over and/or are influenced by the new interconnector in order to implement coordinated methods for congestion management, and, in particular, for interconnection capacity calculation.

If this is the case, the compensation terms indicated above do not prejudice to those that might apply to any limitations resulting from this coordinated capacity calculation.

The public transmission system operator, the operators of new interconnectors and other system operators should be included in all steps of the elaboration of coordinated interconnection capacity calculation methods. These methods must be included in the interconnection capacity calculation method of the public transmission system operator, which must be submitted for CRE's approval, pursuant to paragraph I of article 30 of the Terms of Service for concession of the public electricity transmission system approved by decree n° 2006-1731 of 23 December 2006.

The present decision, as well as CRE's communication of 29 March 2012 on the application of article 17 of Regulation (EC) No. 714/2009 of 13 July 2009, update CRE's deliberation of 30 September 2010 on the application of article 7 of Regulation (EC) 1228/2003 of 26 July 2003 and on conditions for access to the French electricity transmission grid for new exempt interconnectors.

This deliberation will be published in the *Journal officiel* of the French Republic.

Paris, the 9 May 2012

On behalf of the French Energy Regulation  
Commission (CRE),  
The President,  
Philippe de LADOUCKETTE